

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNATHAN CRAFT, et al.

Defendant.

Case No. **19-cr-1631-DHU**

**DEFENDANT JOHNATHAN CRAFT'S REPLY TO GOVERNMENT'S
RESPONSE TO THE MOTION FOR USE OF A SPECIAL QUALIFIED JURY
LIST PURSUANT TO THE COURT'S MODIFIED JURY PLAN SECTION 5(b)(1)**

Johnathan Craft, by and through counsel of record, Meredith Baker, Law Office of Meredith Baker and Barrett G. Porter, Burgess & Porter Law, hereby respectfully replies to the government's response filed herein on May 5, 2023 (Doc. 523).

A defendant in a criminal case has a constitutional and statutory right to a petit trial jury chosen without discrimination from a **fair and representative cross section of the community**. *Glasser v. United States*, 315 U.S. 60, 85-86 (1942), *superseded on other grounds by statute, as recognized by Bourjaily v. United States*, 483 U.S. 171 (1987)(emphasis added). *See also*, Jury Selection and Service Act (JSSA), 28 U.S.C. § 1861, et. seq.

The government's assertion that Mr. Craft or his counsel are engaging in "gamesmanship" is incredulous and unsubstantiated. Mr. Craft and his counsel had no information about the ethnic/racial make-up of the jury venire until the prospective jurors entered the courtroom.

Moreover, the hearing on April 24, 2023, revealed that several of the last jury venires generated by the federal court clerk have had no African American representation. That discovery is a strong indicator that something is systemically wrong with the current jury selection process as the current process is not yielding a "fair and representative cross-section" of the community.

The government's assertion that the Motion for Use of a Special Qualified Jury was premature, ("cart before the horse") is also unsubstantiated by the facts here. The Court set a deadline of May 8, 2023, for the filing of any motions regarding Section 5(b)(1) requests for Special Jury Lists. Therefore, had Mr. Craft opted to delay any such motion, it would have either been foreclosed by the Court's deadline, or worse, caused more delay in Mr. Craft receiving his constitutional right to a fair trial.

Currently, as indicated by the 2015 Master Jury Plan, only registered voters constitute the source of prospective jurors in our New Mexico federal court. Thus, not all qualified prospective African American jurors in New Mexico are included in the registered-voter-only source pool. As the defense anticipates showing, there is a significant number and significant percentage of African Americans excluded from jury service because the Court's current Master Jury Plan dramatically limits the source of prospective jurors to a specific (more white, more wealthy, and more conservative) sector of the community. That is the type of exclusion and discrimination prohibited in 28 U.S.C. § 1862.

Noticeably, the government in its 6-page rant against Mr. Craft asserting his constitutional right to a jury that comprises a “fair and representative cross-section” of the community fails to assert any prejudice to the government for his request. Indeed, the factual circumstances learned during the April 24, 2023, hearing support Mr. Craft’s request for a Special Jury List. Contrary to the government’s assertion, the current jury selection system does appear to be materially flawed.

Although Mr. Craft’s request for a Special Jury List does not fix the apparent systemic exclusion African Americans from the source of prospective New Mexico federal jurors, it provides potential relief from the current disparity. Having a Special Jury List drawn from Bernalillo County will significantly improve Mr. Craft’s chances of getting a jury venire comprising a “fair and representative cross-section” of the community.

The Court indicated that it will not continue the current trial setting of July 17, 2023, even if Mr. Craft is not able to perfect his challenge to the jury selection process. In that event, Mr. Craft agrees to accept the results of a Special Jury List drawn from Bernalillo County for the purposes of his trial. He will, however, reserve the right to continue any on-going challenge to the jury selection process in the interest of other defendants in federal court.

WHEREFORE, Mr. Craft respectfully requests that the Court order that the jury venire created for his trial be drawn exclusively from Bernalillo County.

I hereby certify that the foregoing Document was served electronically through the CM/ECF system, which caused this reply to be served on all parties.

/s/ Barrett (Barry) G. Porter

Barrett G. Porter
Counsel for Defendant

Respectfully Submitted,

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/s/ Barrett (Barry) G. Porter

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